

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

LaPATRICK A. JOHNSON, G62253,)
)
 Plaintiff(s),) No. C 14-2495 CRB (PR)
)
 vs.) ORDER OF DISMISSAL
)
 STATE OF CALIFORNIA, et al.,)
)
 Defendant(s).)

Plaintiff, a State of California prisoner at High Desert State Prison, has filed a pro se complaint under 42 U.S.C. § 1983 seeking damages for allegedly “wrongful conviction and incarceration.” Compl. at 3. Plaintiff also seeks “dismiss[al]” of his state conviction.

DISCUSSION

A. Standard of Review

Federal courts must engage in a preliminary screening of cases in which prisoners seek redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The court must identify cognizable claims or dismiss the complaint, or any portion of the complaint, if the complaint “is frivolous, malicious, or fails to state a claim upon which relief may be granted,” or “seeks monetary relief from a defendant who is immune from such relief.” *Id.* § 1915A(b). Pro se pleadings must be liberally construed, however. *Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1990).

1 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two
2 elements: (1) that a right secured by the Constitution or laws of the United States
3 was violated, and (2) that the alleged violation was committed by a person acting
4 under the color of state law. West v. Atkins, 487 U.S. 42, 48 (1988).

5 B. Legal Claims

6 In order to recover damages for allegedly unconstitutional conviction or
7 imprisonment, or for other harm caused by actions whose unlawfulness would
8 render a conviction or sentence invalid, a § 1983 plaintiff must prove that the
9 conviction or sentence has been reversed on direct appeal, expunged by executive
10 order, declared invalid by a state tribunal authorized to make such determination,
11 or called into question by a federal court's issuance of a writ of habeas corpus.
12 Heck v. Humphrey, 512 U.S. 477, 486-87 (1994). A claim for damages bearing
13 that relationship to a conviction or sentence that has not been so invalidated is not
14 cognizable under § 1983. Id. at 487.

15 When a state prisoner seeks damages in a § 1983 suit, the district court
16 must therefore consider whether a judgment in favor of the plaintiff would
17 necessarily imply the invalidity of his conviction or sentence; if it would, the
18 complaint must be dismissed unless the plaintiff can demonstrate that the
19 conviction or sentence has already been invalidated. See id. A judgment in favor
20 of the plaintiff here would imply the invalidity of a state conviction which has not
21 already been invalidated. The instant allegations therefore fail to state a
22 cognizable claim under § 1983 and must be DISMISSED without prejudice. See
23 Edwards v. Balisok, 520 U.S. 641, 649 (1997); Trimble v. City of Santa Rosa, 49
24 F.3d 583, 585 (9th Cir. 1995).¹

25
26 ¹And to whatever extent plaintiff seeks to challenge either the fact or
27 duration of his confinement, his sole remedy is to file a petition for writ of habeas
28


CONCLUSION

For the foregoing reasons, the complaint is DISMISSED for failure to state a claim under the authority of 28 U.S.C. § 1915A(b). The dismissal is without prejudice to reasserting the allegations in a new complaint if a cause of actions later accrues.

The clerk shall enter judgment in accordance with this order, terminate all pending motions as moot and close the file.

SO ORDERED.

DATED: June 30, 2014



CHARLES R BREYER
United States District Judge

corpus under 28 U.S.C. § 2254 after exhausting state judicial remedies. See Calderon v. Ashmus, 523 U.S. 740, 747 (1998). Any such claim therefore is dismissed without prejudice. See Trimble, 49 F.3d at 586.